

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: March 10, 1994

FAA Order No. 94-8

In the Matter of:)
)
)
RAUL NUNEZ)
)
)
_____)

Docket No. CP92S00028

DECISION AND ORDER

Respondent Raul Nunez has appealed from the written initial decision issued by Administrative Law Judge Robert L. Barton, Jr.^{1/} The law judge found that Respondent failed to comply with his Order to Show Cause directing Respondent to file an answer to the complaint. The law judge granted Complainant's motion to deem the complaint allegations admitted, and assessed the \$1,000 civil penalty sought in the complaint.^{2/}

^{1/} A copy of the law judge's written initial decision is attached.

^{2/} Respondent's appeal was dismissed by the Administrator for failure to perfect in In the Matter of Raul Nunez, FAA Order No. 93-8 (March 24, 1993). The Administrator, however, granted Respondent's Petition for Reconsideration in In the Matter of Raul Nunez, FAA Order No. 93-32 (October 20, 1993), and construed the notice of appeal as an appeal brief, thereby permitting this appeal.

The complaint in this case was served on January 17, 1992. Under Section 13.209(a) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 13.209(a), Respondent was required to file an answer within 30 days of service of the complaint.^{3/} Respondent did not do so. Complainant filed a motion to deem the complaint allegations admitted.^{4/} On October 19, 1992, the law judge issued an Order to Show Cause, directing Respondent to file an answer within 10 days and to demonstrate good cause for the late filing. Respondent never filed an answer to the complaint or a response to the Order to Show Cause. On November 5, 1992, the law judge issued his final order granting Complainant's motion to deem the complaint allegations admitted.

Respondent's sole argument on appeal is that he did not file an answer because he did not receive the Order to Show Cause until October 30, 1992, one day after the order's 10-day response period expired.^{5/} Respondent states that although the law judge's order was stamped as having been

^{3/} Section 13.209(a), 14 C.F.R. § 13.209(a), provides in relevant part: "[a] respondent shall file a written answer to the complaint ... not later than 30 days after service of the complaint."

^{4/} Section 13.209(f), 14 C.F.R. § 13.209(f), provides in relevant part: "[a] person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint."

^{5/} Respondent actually had 5 additional days to respond to the law judge's order under Section 13.211(e), 14 C.F.R. § 13.211(e). Under Section 13.211(e) "[w]henver a party has a right or duty to act or to make any response within the prescribed period after service by mail, or on a date certain after service by mail, 5 days shall be added to the prescribed period."


served on October 19, 1992, he received the order on October 30, 1992, in an envelope with an October 28, 1992, Washington, DC, postmark.

Respondent's appeal does not address the critical issue of whether there was good cause for his failure to file an answer. See In the Matter of Playter, FAA Order No. 90-15 (March 19, 1990), aff'd, Playter v. FAA, 933 F.2d 1009 (6th Cir. 1991). Respondent does not explain why he never filed an answer. He does not contend that he was unaware of the requirement that he file an answer, before receiving the Order to Show Cause.^{6/}

If Respondent did receive the law judge's order late, Respondent should have called the law judge's office immediately to ask for an extension of time to file the answer and respond to the order. The Order to Show Cause instructed Respondent to call the law judge's secretary or law clerk at the telephone numbers listed, if he had any questions concerning the order. In his petition for reconsideration, Respondent stated that he called "Washington" and was informed that he had to file an appeal with the Administrator. Respondent does not state how long after receipt of the law judge's Order To Show Cause he called, or to whom he spoke.

^{6/} The complaint did not advise Respondent of the requirement of filing an answer, as recommended by the Administrator in In the Matter of Metz, FAA Order No. 90-3, (January 29, 1990). Unlike In the Matter of Metz, Respondent has not contended that he did not receive a copy of the Rules of Practice in FAA Civil Penalty Proceedings. Complainant's motion to deem the complaint allegations admitted, served on October 13, 1992, did inform Respondent that he was required to file an answer.

Respondent has failed to demonstrate good cause for failing to file an answer to the complaint. Accordingly, the law judge's decision is affirmed.^{7/}



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 10th day of March , 1994.

^{7/} Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. App. § 1486), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1992).